



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R1–ES–2020–0101; FXES11140100000–212–FF01E0000]

Draft Environmental Impact Statement and Habitat Conservation Plan for Thurston County, Washington

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; notice of public meetings; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a habitat conservation plan developed by Thurston County, Washington (applicant), in support of an application for an incidental take permit under the Endangered Species Act. The applicant is seeking authorization for the incidental take of six species, expected to result from various County-permitted development activities, as well as construction and maintenance of County-owned or County-managed infrastructure, over the next 30 years. The incidental take and other impacts would occur in Thurston County. This notice also announces the availability of the Service’s draft environmental impact statement and the opening of the public comment period, which is intended to satisfy the National Environmental Policy Act requirement to evaluate the

impacts of the proposed action on the human environment. We are seeking public comments on the habitat conservation plan and draft environmental impact statement.

DATES: *Submitting Comments:* We will accept comments received or postmarked on or before **[INSERT DATE 45 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments submitted online at <https://www.regulations.gov/> (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on **[INSERT DATE 45 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

Public Meetings: The Service will hold two public meetings during the public comment and review period. To help protect the public and limit the spread of the COVID-19 virus, the public meetings will be held virtually at the following times:

- October 12, 2021 at 6 p.m.
- October 14, 2021, at 6 p.m.

ADDRESSES:

Submitting Comments: You may submit comments by one of the following methods:

- *Internet:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS–R1–ES–2020–0101.
- *U.S. mail:* Public Comments Processing; Attn: Docket No. FWS–R1–ES–2020–0101; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post online any personal information that you provide (see **Public Availability of Comments** under **SUPPLEMENTARY INFORMATION**). We

request that you submit comments by only the methods described above. For additional information about submitting comments, see **Request for Public Comments** under **SUPPLEMENTARY INFORMATION**.

Public Meetings: A link and access instructions to the virtual meetings will be posted to <https://www.fws.gov/wafwo/> at least one week prior to the first public meeting date.

Reviewing U.S. Environmental Protection Agency (EPA) comments on the draft HCP and DEIS: See **EPA's Role in the EIS Process** under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Curtis Tanner, by telephone at 360–753–9440, or by email at Curtis_Tanner@fws.gov. Hearing or speech impaired individuals may call the Federal Relay Service at 800–877–8339 for TTY service.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service (Service) has prepared a draft Environmental Impact Statement (DEIS) to evaluate an application for an incidental take permit (ITP) received on July 30, 2020, from Thurston County, Washington (applicant). In accordance with the requirements of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the applicant is requesting authorization of incidental take of the threatened Yelm pocket gopher (*Thomomys mazama yelmensis*), Olympia pocket gopher (*T. mazama pugetensis*), Tenino pocket gopher (*T. mazama tumuli*), and Oregon spotted frog (*Rana pretiosa*); the endangered Taylor's checkerspot butterfly (*Euphydryas editha taylori*); and the Oregon vesper sparrow (*Pooecetes gramineus affinis*), which is under review to determine if Federal listing under the ESA is warranted (hereafter, covered species). If issued, the ITP would authorize take of the covered species that may occur incidental to various County-permitted development

activities, as well as construction and maintenance of County-owned or County-managed infrastructure, for a period of 30 years. In support of the ITP application, the applicant prepared the draft Thurston County habitat conservation plan (HCP), which specifies the impacts that will likely result from the take of covered species and describes the steps the applicant will take to avoid, minimize, and mitigate such impacts.

The Service prepared a DEIS to evaluate the impacts of the proposed ITP action on the human environment, consistent with the purpose and goals of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and pursuant to the Council on Environmental Quality's implementing NEPA regulations at 40 CFR Parts 1500-1508. Additionally, this DEIS was prepared consistent with the Department of the Interior NEPA regulations (43 CFR Part 46); longstanding federal judicial and regulatory interpretations; and Administration priorities and policies including Secretary's Order No. 3399 requiring bureaus and offices to use "the same application or level of NEPA that would have been applied to a proposed action before the 2020 Rule went into effect."

The DEIS will also be used by Thurston County to satisfy the requirements of the Washington State Environmental Policy Act (SEPA) as provided in Revised Code of Washington 43.21C and SEPA implementing regulations found at Washington Administrative Code 197-11. We are making the HCP and DEIS available for public review and comment.

Background

Thurston County is seeking an ITP, and intends to implement the Thurston HCP, to cover a variety of activities for which the County issues permits or approvals, or activities the County otherwise carries out under its jurisdiction as detailed in the HCP. These activities include residential development, development of accessory structures, installation, repair, or alteration of septic systems, commercial and industrial

development, public service facility construction, transportation projects, transportation maintenance and other work within County-owned road rights-of-way, landfill and solid waste management, water resources management, and County parks, trails, and land management. The covered activities would not include mining. The proposed covered activities are described further in the DEIS and in the HCP.

The species proposed for coverage under the Thurston HCP and ITP include three subspecies of the *Mazama* pocket gopher (the Yelm pocket gopher, Olympia pocket gopher, and the Tenino pocket gopher), Oregon spotted frog, Taylor's checkerspot butterfly, and the Oregon vesper sparrow. Each of the proposed covered species is known to occur in Thurston County. Habitat loss and fragmentation are primary threats to all proposed covered species. Habitat likely to be impacted is already largely fragmented or degraded, and not currently managed for the covered species.

The HCP includes measures to avoid, minimize, and mitigate impacts to covered species, along with an analysis of projected impacts to covered species. As it is not practical to express the anticipated take (or to monitor take-related impacts) in terms of number of individuals of each species, the HCP uses habitat, measured as habitat area or as "functional-acre" values, as a surrogate for quantifying impacts to each covered species and related conservation outcomes. The functional-acre approach weights habitat acreage by currently available information on covered species' distribution, habitat condition, and landscape position in relationship to priority habitat areas. This approach provides greater weight to both impacts and mitigation occurring in or near areas that are a priority for conservation of the covered species.

Through the HCP, the county would permit or conduct covered activities that cause take of covered species, monitor the amount and extent of take, and ensure mitigation on permanently protected sites to fully offset impacts of the taking on covered species. The HCP conservation program includes performance standards for

conservation lands and minimization measures tailored to the best available information for each species.

Impacts to *Mazama* pocket gopher subspecies would result from HCP-covered development and maintenance activities within habitat in their respective ranges. Due to more limited exposure to covered activities, impacts to the Oregon spotted frog, Taylor's checkerspot butterfly, and Oregon vesper sparrow would be caused by a smaller number of HCP-covered development and maintenance activities taking place in respective habitats for each species, which have relatively localized ranges in Thurston County.

Measures to minimize impacts of the taking on covered species are primarily tied to reducing the extent of habitat impacts through within-site project design, along with additional species-specific measures for each group of covered activities, described in the HCP. To mitigate unavoidable impacts to covered species, Thurston County proposes to permanently protect and manage habitat occupied by covered species by establishing new permanent habitat reserves, acquiring permanent conservation easements on working lands, and enhancing and permanently maintaining habitat quality on existing reserves (collectively "conservation lands"). The addition of conservation lands would occur incrementally during HCP implementation at a pace that meets or exceeds the amount and extent of impacts to each covered species.

The Thurston HCP includes funding assurances, monitoring, adaptive management, and changed circumstance provisions to help ensure that biological goals for the covered species are achieved. Annual reports would confirm the amount, type, and location of impacts and mitigation, as well as the status of monitoring, adaptive management, changed circumstances, and funding. The proposed conservation program and expected effects of HCP implementation on the covered species and their designated critical habitats are described in greater detail in the Thurston HCP and in the DEIS.

Endangered Species Act

Section 9 of the ESA prohibits “take” of fish and wildlife species listed as endangered under section 4 (16 U.S.C. 1538 and 16 U.S.C. 1533, respectively). The ESA implementing regulations extend, under certain circumstances, the prohibition of take to threatened species (50 CFR 17.31). Under section 3 of the ESA, the term “take” means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct” (16 U.S.C. 1532(19)). The term “harm” is defined by regulation as “an act which actually kills or injures wildlife.” Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering” (50 CFR 17.3).

Under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed fish and wildlife species. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(1)(B) of the ESA contains provisions for issuing ITPs to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

1. The taking will be incidental;
2. The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
3. The applicant will ensure that adequate funding for the plan will be provided;
4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
5. The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

Anticipated Permits and Authorizations

In addition to the requested ITP, Thurston County will manage covered activities to comply with all other applicable laws, including without limitation Washington State endangered and protected species regulations; the Washington State Growth Management Act, which includes State and local protection of historic and cultural resources implemented through the County's Comprehensive Plan; the Washington State Shoreline Management Act; the Washington State Hydraulic Code; Thurston County Critical Area Ordinances; State and local requirements for administrative procedures; and other regulations. Individual projects conducted under the HCP will undergo individual review by the County for compliance with local codes and further public review, as appropriate, through the Washington SEPA.

National Environmental Policy Act

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), the Service prepared a DEIS, in which we analyze the proposed action and a reasonable range of alternatives to the proposed action. The environmental consequences of each alternative, including the effects of those alternatives when combined with reasonably foreseeable future actions and environmental trends, were analyzed to determine if significant impacts to the human environment would occur. Three alternatives are analyzed in detail in the DEIS.

Alternative 1 – No-Action Alternative: The Service would not issue incidental take authorization to the County, and the County would not implement the HCP. The County would continue to conduct, permit, and approve activities on a case-by-case basis in compliance with Federal, State, and local requirements, including the Thurston County Critical Areas code. The County and individual project proponents would continue to evaluate each project to ensure unauthorized take of listed species is avoided. The County would not implement a coordinated, County-wide conservation program for ESA-listed species. This alternative is the current situation in Thurston County.

Alternative 2 – Proposed Action: The Service would, in accordance with applicable law, issue the requested ITP to Thurston County for the incidental take of covered species by the covered activities. The County would implement the Thurston County HCP and its conservation program, including, without limitation, implementation of minimization measures for covered activities; mitigation measures to fully offset the impacts of the taking on covered species; monitoring and reporting requirements. The County would also provide funding for HCP implementation. Under Alternative 2, mitigation would be achieved, in part, through the execution of conservation easements on working agricultural lands, the enhancement of existing conservation reserves, and the establishment of new conservation reserves.

Alternative 3 – Modified HCP: The Service would, in accordance with applicable law, issue an ITP to Thurston County with the same permit area, permit term, covered species, covered activities, and many of the HCP elements described for the Proposed Action. This alternative explores whether the HCP could be modified to provide higher conservation value to covered species by acquiring new habitat reserves and managing them to achieve the highest habitat quality. Conservation easements would not be executed on working agricultural lands, and enhancement of existing conservation reserves would not be part of the mitigation strategy. Under this Alternative, fewer acres of new conserved habitat may be needed to fully offset the impacts of the taking to covered species.

EPA's Role in the EIS Process

The EPA is charged with reviewing all Federal agencies' EISs and commenting on the adequacy and acceptability of the environmental impacts of proposed actions. Therefore, EPA is publishing a notice in the *Federal Register* announcing this DEIS, as required under section 309 of the Clean Air Act. The publication date of EPA's notice of

availability is the official beginning of the public comment period. EPA serves as the repository (EIS database) for EISs prepared by Federal agencies. You may search for EPA comments on EISs, along with EISs themselves, at <https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search>.

Public Comments

You may submit your comments and materials by one of the methods in

ADDRESSES. We specifically request information on the following:

1. Biological information, analysis, and relevant data concerning the covered species, other wildlife, and ecosystems.
2. Potential effects that the proposed permit action could have on the covered species, and other endangered or threatened species, and their habitats, including the interaction of the effects of the project with climate change and other stressors.
3. Adequacy of the proposed actions to minimize and mitigate the impact of the taking on covered species, including but not limited to best management practices, conservation easements, establishment of new reserves, reserve habitat enhancement, and adaptive management procedures.
4. Potential effects that the proposed permit action could have on other aspects of the human environment, including effects on plants and animals, water resources, and aesthetic, historic, cultural, economic, social, environmental justice, climate change, or health effects.
5. The alternatives analysis conducted by the Service, including the alternatives analyzed, the range of alternatives analyzed, and the alternatives considered but not analyzed in detail.

6. The presence of historic properties—including archaeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns—in the proposed permit area, which are required to be considered in project planning by the National Historic Preservation Act.
7. Reasonably foreseeable environmental trends and planned actions in the plan area and their possible impacts on the affected environment, including the covered species, as well as any connected actions that are closely related and should be discussed in the same DEIS.
8. The alternatives, information, and analyses submitted during the public scoping period and the summary thereof (40 CFR 1502.17), appended to the DEIS.
9. Other information relevant to the Thurston HCP and its impacts on the human environment.

To help protect the public and limit the spread of the COVID-19 virus, two public meetings will be conducted online to accommodate best practices and local guidelines in place at the time this notice was prepared. See **DATES** and **ADDRESSES** for the dates and times of the virtual public meetings. The virtual public meetings will provide Thurston County and the Service an opportunity to present information pertinent to the Thurston HCP and for the public to ask questions on the HCP and DEIS. No opportunity for oral comments will be provided. Written comments may be submitted by the methods listed in **ADDRESSES**.

Reasonable Accommodations

Persons needing reasonable accommodations in order to attend and participate in either of the public meetings should contact the Service's Washington Fish and Wildlife

Office, using one of the methods listed in **ADDRESSES** as soon as possible. In order to allow sufficient time to process requests, please make contact no later than one week before the desired public meeting. Information regarding this proposed action is available in alternative formats upon request.

Public Availability of Comments

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Comments and materials we receive, as well as references for supporting documentation we used in preparing the DEIS, will be available for public inspection online in Docket No. FWS-R1-ES-2020-0101 at <http://www.regulations.gov/> (see **FOR FURTHER INFORMATION CONTACT**).

Next Steps and Decision to Be Made

After public review and comment, we will evaluate the permit application, associated documents, and any comments received, to determine whether the permit application meets the requirements of section 10(a)(1)(B) of the ESA. We will also evaluate whether issuance of the requested ITP would comply with section 7 of the ESA. The Service expects to have a Final EIS for publication in the Federal Register by early 2022. At least 30 days after the FEIS is available, we expect the record of decision will

be completed in accordance with applicable timeframes established in 40 CFR 1506.11, and the Regional Director will issue a decision on the requested ITP. The current estimate for the issuance of a record of decision is March 2022. This estimate assumes that there are no significant outstanding issues requiring resolution.

Authority

We provide this notice in accordance with the requirements of section 10(c) of the ESA (16 U.S.C. 1539(c)) and NEPA and its implementing regulations (40 CFR 1503.1 and 1506.6).

Hugh Morrison,

Deputy Regional Director,

U.S. Fish and Wildlife Service.

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